



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

NEA-NEW HAMPSHIRE

 Complainant

 v.

PINKERTON ACADEMY

 Respondent

CASE NO. T-0363

DECISION NO. 85-48

APPEARANCES

Representing NEA-New Hampshire
James Allmendinger, Esq., Counsel

Representing Pinkerton Academy
Bradley F. Kidder, Esq., Counsel

Also in Attendance
Marc Benson, UniServ Director, NEA-NH
Don Briggs, NEA-NH
Tom Adams, UniServ Director, NEA-NH
Jean Watts, NEA-NH
Bob Watts, NEA-NH
Patricia Dowey, Pinkerton Academy
Bradford Ek, Principal, Pinkerton Academy
Susanne Price, Brad Kidder's Office

BACKGROUND

On December 20, 1984, the National Education Association-New Hampshire filed an improper practice charge against Pinkerton Academy located in Derry, New Hampshire. In its charges, NEA-NH alleges:

- 1) That unknown agents of the Pinkerton Academy confiscated, without authorization, NEA-NH membership cards from the pocketbook of Ms. Jean Watts on or about June 21, 1984;

- 2) On or about September 11, 1984, and subsequently Pinkerton Academy through its principal, Bradford V. Ek, threatened and coerced Ms. Jean Watts with retaliation for participating in a NEA-NH summer leadership conference;

- 3) On or about September 14, 1984, Pinkerton Academy, by and through its principal, Bradford V. Ek, required Ms. Jean Watts to enroll in and satisfactorily complete academic courses for additional certification which certification was not required of other similarly situated instructional personnel nor actually necessary for Ms. Watts, who is a properly certified instructor;
- 4) Pinkerton Academy, by and through its agents, has kept a file of materials relating to the NEA-NH summer leadership conference and Ms. Watts, including a list of participants at the NEA-NH summer leadership conference.

By the above acts, NEA-NH claims that Pinkerton Academy has violated RSA 273-A:5, I (a), (c), in that the Academy has interfered with the rights of public employees to engage in protected, concerted activity for the purpose of engaging in collective bargaining concerning wages, hours and other terms and conditions of employment.

Pinkerton Academy answers that the Academy is a private institution, not a public employer, and therefore does not come under the jurisdiction of the PELRB, nor is Ms. Watts a public employee as defined by RSA 273-A:1, IX and therefore the case should be dismissed.

Pinkerton Academy, in addition, denies that it has committed any unfair labor practice, and asserts there has been a police investigation of the reported missing pocketbook and no charge has been brought against any individual and that Mr. Ek, the principal of Pinkerton Academy, in discussion with Ms. Watts about the NEA-NH summer conference, was simply investigating an allegation that Ms. Watts was speaking against her supervisor, Patricia Dowey, at the summer leadership conference.

Mr. Ek also spoke with Ms. Watts about her eligibility for certification in the specific area of mental retardation. This request was based on a written recommendation received from the State of New Hampshire, Department of Education, during a recent evaluation of Pinkerton Academy. Pinkerton Academy further states that Ms. Watts was not the only one requested to obtain additional certification; that two other special education personnel were also requested to take certain courses, and that two other people in the past had done the same thing.

A hearing was held in the Public Employee Labor Relations Board's office in Concord, New Hampshire on April 11, 1985, with all parties represented. The hearing was divided into two parts, with the first part focusing on the question of jurisdiction of the PELRB and the question of whether or not Pinkerton Academy is a public employer under the statute and the second part focusing on the unfair labor practice charges themselves.

FINDINGS OF FACT AND RULINGS OF LAW

Hearing on jurisdictional question

At the hearing witnesses and documentation established the following pattern of fact with respect to the Pinkerton Academy and its services for the towns of Derry, Chester, Windham and Hampstead:

- 1) Pinkerton Academy was organized as a non-profit corporation by an

act of the legislature on 15 June 1814. Since the 1960's Pinkerton Academy has received tuition from the towns of Derry, Chester, Windham and Hampstead and has provided a high school education for the students of those towns which in fact do not maintain their own high school;

- 2) Under the laws of the State of New Hampshire (RSA 194:22), school districts of towns are authorized to "make a contract with an academy...and raise and appropriate money to carry the contract into effect";

Under RSA 194:22, an Academy that contracts with the public school district becomes a public high school for the statute provides as follows: "If the contract is approved by the state board, the school for which it is made shall be deemed a high school maintained by the district";

RSA 194:23 further provides in part, that "...such schools shall also comply with the standards prescribed by the State Board of Education...";

- 3) Pinkerton Academy is governed by a board of trustees which consists of up to 12 individuals and which is self perpetuating. None of the trustees at the Pinkerton Academy are elected by the general public of any community or group of communities in New Hampshire. Decision making ability of Pinkerton Academy is not under the direct control of any municipality, school district, group of tax payers or citizens or voters in New Hampshire;
- 4) Pinkerton Academy does not have the statutory power to raise and appropriate money from taxpayers as do school districts nor does it hold an annual school district meeting as do public schools under the requirements of RSA 197:1;
- 5) All equipment and buildings located on the grounds of Pinkerton Academy are owned by Pinkerton Academy and not by any public school district or town;
- 6) While Pinkerton Academy was founded as a private non-profit corporation, it has functioned as a secondary day school for the Derry, Chester, Windham and Hampstead school districts in recent years. Pinkerton Academy has fifteen year contracts with said school districts providing that it will offer a course of studies for grades 9 through 12 and such facilities and equipment so that it will be an approved comprehensive high school by the State Board of Education under RSA 194:22;
- 7) There is no superintendent of schools having jurisdiction over the Pinkerton Academy and Pinkerton Academy is not subject to the jurisdiction or authority or control of a school administrative unit under RSA 186:11;
- 8) Teachers employed by the Pinkerton Academy are bound by state school regulations and may appeal their disputes involving dismissals to the State Commissioner of Education and must be certified by the State Department of Education. The teachers of the school are all members of the state retirement system;

- 9) The N.H. Department of Education lists Pinkerton Academy as "a public academy" in its directory;
- 10) The Commissioner of Education can demand certain actions of the Pinkerton Academy in providing its students with certain aspects of high school education. The Commissioner's decision is binding on the school;
- 11) It was also established that all but very few students at the school are students that are attending under the contracts as signed with the towns of Derry, Chester, Windham and Hampstead.

PELRB Conclusion on jurisdictional question

It is the finding of the PELRB that the Pinkerton Academy acting as a public high school for the towns of Derry, Chester, Windham and Hampstead, coming under the regulations of the Department of Education of the State of New Hampshire and its Commissioner, with teachers who are certified by the State of New Hampshire, receiving tuition money from the above named towns, is in fact behaving in much the same way as a public high school except with its own board of trustees and governing units.

It is the decision of the PELRB that Pinkerton Academy is in fact a "quasi-public institution" and as such constitutes a public employer under the appropriate section of RSA 273-A:1, X "...any quasi-public corporation,...".

By unanimous vote. Chairman Robert E. Craig presiding. Members Robert Steele and Russell Verney present and voting. Also present, Evelyn C. LeBrun, Executive Director.

Hearing on unfair labor practice charges

Testimony and exhibits were offered and the following set of findings of fact emerged with respect to the unfair labor practice charges:

- 1) That Ms. Jean Watts has been an active member of NEA-NH since 1983 and that the school officials were aware of this. Ms. Watts did attend a leadership conference of NEA-NH and this activity was a subject of some conversation between her and the principal of the school, Mr. Ek;
- 2) Testimony and exhibits introduced at the hearing also further established that with respect to the request to improve certification to teach the mentally retarded, this suggestion was made by an evaluation of Pinkerton Academy and was reasonably adopted by the principal of the school. Which principal has at least on one occasion cooperated with Ms. Watts in her pursuit of her special certification;
- 3) No evidence was introduced at the hearing to establish that any individual had interfered with Ms. Watts' personal possessions or in any way interfered with her personally pursuing her desire to establish a NEA chapter at Pinkerton Academy;
- 4) No action has been taken against Ms. Watts either by the principal or the board which could substantiate a charge of harrassment or

intimidation. Indeed several exhibits suggest that the evaluation of Ms. Watts by the school indicates that she is a valued employee and except for the attempts to increase the certification requirement there is nothing to suggest that the Pinkerton Academy is in any way displeased with the teaching duties of Ms. Watts.

PELRB Conclusion on the unfair labor practice charges

It is the decision of the PELRB that the charges of unfair labor practice brought against the Pinkerton Academy have not been proven and that the Academy did not appear to be trying to threaten or coerce Ms. Watts for her union activity.

By unanimous vote. Chairman Robert E. Craig presiding. Members Robert Steele and James Anderson present and voting. Also present, Evelyn C. LeBrun, Executive Director.

COMBINED DECISION AND ORDER

- 1) It is the decision of the PELRB that the Pinkerton Academy is a quasi-public corporation for purposes of the definition of public employer under RSA 273-A:1, X and will be treated accordingly by this Board.
- 2) The PELRB declines to find an unfair labor practice against the Pinkerton Academy in this case.



ROBERT E. CRAIG, CHAIRMAN

Signed this 10th day of July, 1985.